IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-728-SB of 2005
Date of Decision: 9th November, 2022

Hoshiar Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Keshav Pratap Singh, Advocate for the appellant.
Mr. Arun Luthra, Deputy Advocate General,Punjab.

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AVNEESH JHINGAN , J.(Oral)

1. Aggrieved of the conviction and sentence in FIR No. 47 dated 23.8.2001, under Section 7 of the Prevention of Corruption Act, 1988 (for short, 'the Act'), registered at Police Station, Vigilance Bureau, Patiala, the present appeal is preferred by Hoshiar Singh (appellant).

2. As per the case set up by the prosecution, complainant-Harinder Singh went to Patwar Khana, Fatehgarh Sahib for getting a mutation of sale deed registered in favour of his mother. The appellant posted as Patwari demanded R.10,000/- for entering the mutation. On 23.8.2001, the complainant along with Harbhajan Singh went to the office of Vigilance Bureau, made a complaint and raiding party was constituted by Deputy Superintendent of Police-Paramjit Singh Khaira. Joginder Singh Ghuman, Deputy Economic Advisor, Sukhwinder Singh from the

Department of Fisheries were the official witnesses and Harbhajan Singh was the shadow witness. Currency notes worth Rs.2500/- were laced with Phenolphthalein Powder and initalled. On signal from the shadow witness, the tainted currency was recovered from the left pocket of shirt of the appellant. On washing of the hands and pocket of the shirt with Sodium Carbonate solution, the colour turned pink.

3. The prosecution to prove its case examined nine witnesses, though the complainant was declared hostile.

4. The appellant in his statement under Section 313 Cr.P.C. claimed false implication and demanded trial. He denied demand and acceptance as also that any hand wash test was undertaken. He examined four defence witnesses.

5. The trial court appreciating the evidence and considering that:

(i) though the complainant turned hostile, the shadow witness, official witnesses and members of the raiding party supported the case of the prosecution;

(ii) the tainted currency was recovered from the appellant;

(iii) the entry made in the mutation on 17th and 18th August, 2001 was not sufficient as the mutation was yet to be sanctioned and

(iv) there was a valid sanction to prosecute the appellant

convicted the appellant under Section 7 of the Act vide judgment dated 12.4.2005 and vide order of even date, he was ordered to undergo rigorous imprisonment for two and half years and fine of Rs.15,000/-. In default of payment of fine, the appellant was ordered to further undergo rigorous imprisonment for three months.

6. Learned counsel for the appellant submits that the mutation was entered on 17.8.2001 i.e. prior to the raid, hence there was no occasion for demanding illegal gratification. He further submits that the complainant had not supported the case of prosecution. He argues that the DSP had not offered his own search before searching the appellant and there are material contradictions in the statement of the shadow witness.

7. Learned counsel for the State argues that the prosecution had proved demand and acceptance of bribe. The shadow witness fully supported the case of the prosecution. The contention is that laced currency notes were recovered from the appellant, on washing of hands and pocket of shirt of the appellant with the Sodium Carbonate solution, the colour turned pink. He further argues that making entries of mutation on 17^{th} and 18^{th} August, 2001 had not made the appellant *functus officio* as the checking and approval of the entry was yet to be done.

8. Heard learned counsel for the parties and perused the record of the court below.

9. The complainant did not support the case of the prosecution and was declared hostile. However, he had not denied the complaint made by him and his signatures on memo for handing over laced currency to him. There cannot be quarrel on proposition that if the complainant had turned hostile, this in itself would not be the ground for acquittal of the appellant. The evidence produced by the prosecution has to be assessed as a whole for considering whether the demand and acceptance of illegal gratification is proved or not. Further in case the demand and acceptance is proved, presumption under Section 20 of the Act is against the accused.

10. In **<u>Vinod Kumar v. State of Punjab</u>, 2015(1) RCR (Criminal) 647,** the Supreme Court held as under:

> *38. The said principle has been followed in **M. R. Purushotham v. State of Karnataka, 2014(11) SCALE 467.** On an attentive and cautious reading of the aforesaid decisions it is noticeable that the court disbelieved the story of the prosecution as no other evidence was brought on record. In N. Narsinga Rao case the accused was charged for the offences punishable under Sections 7 read with Section 13(1)(d) & (2) of the Act. The court, as we have stated earlier, had referred to section 20(1) of the Act and opined that from the proven facts the court can legitimately draw a presumption that the delinquent officer had received and accepted money. As we notice, the authorities in B. Jayaraj (supra) and M.R. Purushotam (supra) do not lay down as a proposition of law that when the complainant turns hostile and does not support the case of the prosecution, the prosecution cannot prove its case otherwise and the court cannot legitimately draw the presumption under Section 20 of the Act. Therefore the proposition, though industriously, presented by Mr. Jain that when Baj Singh, PW5, the complainant, had turned hostile the whole case of the prosecution would collapse is not acceptable and accordingly hereby rejected."*

11. The raiding party consisted of two official witnesses and a shadow witness (Harbhajan Singh) who appeared as PW1. He deposed that in his presence the appellant demanded bribe and thereafter the complainant handed over the tainted currency to the appellant. It would be appropriate to quote the relevant portion of his deposition:

> "*I along with Harinder Singh were to go to the Patwari and after he accepts the money from Harinder Singh on demand I*

was to give a signal to the other members of the raiding party while moving my hand on my head. Accordingly I and Harinder Singh went in the office of the Patwari. On reaching the office of the accused he asked for the money to be paid as bribe to which Harinder Singh replied that he had brought the money with him. Thereafter the amount of Rs.5000/- in the form of tainted notes was handed over to the accused and on demand and he put those tainted currency notes in the left pocket of the shirt worn by him and thereafter I gave the pre arranged signal to the members of the raiding party and on that the members of the raiding party came to the spot."

12. Official witnesses PW7-Joginder Singh Ghuman and Investigating Officer-PW9- Paramjit Singh Khaira, DSP in their testimonies gave the details with regard to recovery of the tainted currency from the pocket of the shirt of the appellant, the procedure followed for conducting the hand wash test and washing of the pocket of the shirt of the appellant with Sodium Carbonate solution and the result was that the colour of the solution turned pink.

13. In **Kamal Singh v. State Tr. C.B.I., 2019, Cri. L.R (SC) 86** the Supreme Court held as under:

"8. In this case, by the evidence of PW-2 and PW-3 and also based on sodium carbonate solution and dipping the hands and pant pocket of the accused turning pink, the acceptance of the amount has been proved. The appellant-accused has not adduced any evidence to rebut the presumption. It is true that the burden which rests on the accused to rebut the presumption is not onerous as that cast on the prosecution to prove its case. Nevertheless, this burden cast upon the accused is to be discharged by bringing evidence which establishes with reasonable probability that the money was accepted by

the accused other than as an illegal gratification. Mere explanation attempting to create doubt on the prosecution case may not be sufficient to rebut the presumption raised under Section 20 of the PC Act. The Courts below have not committed any error in raising statutory presumption under Section 20 of the P.C. Act. The conviction of the appellant under Section 7 and under Section 13(1)(d) read with Section 13(2) of the P.C Act is based upon proper appreciation of the evidence and we do not find any good ground warranting interference with the verdict of conviction."

14. The variations pointed out in the deposition of the shadow witness by learned counsel for the appellant that whether he met the complainant earlier to the day of raid or on the day of raid would not prove fatal. There is bound to be variation with the passage of time but his testimony with regard to demand and acceptance of illegal gratification was specific and had withstood the cross-examination.

15. There is another aspect to be considered that even if the variations are taken into consideration, it nowhere creates a doubt on the presence of the shadow witness at the spot when the trap was laid and recovery was made.

16. In **<u>Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi)</u>, 2020(1) RCR (Criminal) 315,** the Supreme Court held as under:

"*...Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory*

> *evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt...."*

17. The contention raised that mutation entries were made by the appellant on 17th and 18th August, 2001 and there was no occasion for the appellant to demand illegal gratification lacks merit. The complainant had approached the appellant for getting a mutation of the sale deed in favour of his mother. It is forthcoming that mutation entries were not counter-signed by Tej Kaur, mother of the complainant. The mutation was pending as it was not sanctioned. It was the Patwari who had to put it before Kanungo and thereafter Tehsildar had to verify the spot in the presence of Patwari and sanction the mutation. The appellant had not become *functus officio.* As per the deposition of DW2, the entries were verified and sanctioned on 19.9.2001 i.e. after the raid was conducted.

18. Reliance placed upon the defence witnesses DW3-Randhir Singh and DW4-Surinder Singh to the effect that they were present in Patwar Khana and no proceedings had taken place there does not enhance the case of the appellant. From the reading of depositions of DW3, it is forthcoming that two Sikh gentlemen made an enquiry with regard to the appellant, he was taken down stairs, thereafter DW3 on hearing the noise reached the spot. DW4 deposed that two sikh gentleman took appellant downstairs and no proceeding took place in his presence. Hence DW3 and DW4 were not privy to the proceedings that happened in between. It would not be out of place to mention that the recovery memo is duly signed by

two official witnesses, shadow witness and the Investigating Officer.

19. The argument that the Investigating Officer had not offered his personal search before searching the appellant is noted to be rejected. From the testimonies of the Investigating Officer and official witness-PW7 Joginder Singh Ghuman and from the reading of the recovery memo, it is clear that the appellant got recovered the tainted currency. He took out laced currency from the left pocket of his shirt and handed it over to the DSP. It would not be out of place to mention that recovery of tainted currency was in the presence of the shadow witness and the official witnesses. Numbers of the recovered currency notes duly matched with the memo prepared.

20. The prosecution having proved the demand and acceptance, presumption under Section 20 of the Act is against the appellant. Section 20 of the Act is reproduced below:

> *"**Presumption where public servant accepts any undue advantage.-** Where, in any trial of an offence punishable under Section 7 or under Section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive of reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11."*

21. No explanation was put forth by the appellant with regard to possession of the tainted currency, the presumption is to be given full effect.

22. The impugned judgment of conviction and order of sentence are upheld.

23. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

9th November, 2022.

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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No